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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,  
  
Plaintiff/Counterclaim-Defendant,  
  
v.  
  
INTERNATIONAL BUSINESS MACHINES  
CORPORATION,  
  
Defendant/Counterclaim-Plaintiff.

**IBM'S MOTION TO CONFINE SCO'S  
CLAIMS TO, AND STRIKE  
ALLEGATIONS IN EXCESS OF, THE  
FINAL DISCLOSURES**

**(EXPEDITED ORAL ARGUMENT  
REQUESTED)**

Civil No.: 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to Rules 1, 26, 33, and 37 of the Federal Rules of Civil Procedure, Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”), through counsel, respectfully submits this motion to confine SCO’s claims to, and strike allegations in excess of, its December 22, 2005 Disclosure of Material Allegedly Misused by IBM (the “Final Disclosures”).

As the Court is aware, IBM has asked for years that SCO specify its allegations of misconduct by IBM. Ultimately, after repeated motions to compel and for summary judgment necessitated by SCO’s refusal to disclose the materials at issue in the case, the Court entered an order setting October 28, 2005 as the “Interim Deadline for Parties to Disclose with Specificity All Allegedly Misused Material” and December 22, 2005 as the “Final Deadline for Parties to Identify with Specificity All Allegedly Misused Material.” The parties also reached an agreement that both parties were required to identify with specificity any and all material that each party contends the other has misused no later than December 22, 2005. Both parties submitted such materials on the required dates, and advised the Court that they had nothing more to provide.

Despite this, three of SCO’s May 19, 2006 expert reports, those of Drs. Cargill and Ivie and Mr. Rochkind, significantly exceed the scope of the Final Disclosures — indeed, Dr. Cargill’s report effectively seeks to reinvent the case, introducing both new categories of allegedly misused material and a new theory of recovery which relates to them. The Rochkind and Ivie Reports also exceed the Final Disclosures, adding material never before disclosed by SCO. SCO’s refusal to identify exactly what is at issue in this case more than three years into the litigation — and nearly six months after the expiration of its Court-ordered deadline to do so — should be rejected. If allowed to ignore the Court’s Order in this way, SCO will have drastically expanded the scope of this case, just weeks before IBM’s opposing expert reports are due and just months before the dispositive motion cut-off, all to IBM’s substantial prejudice.

For the foregoing reasons, and as set forth in detail in the accompanying memorandum filed and served herewith, IBM respectfully requests that the Court enter an order confining SCO's claims to, and striking allegations in excess of, the Final Disclosures.

DATED this 8th day of June, 2006.

Snell & Wilmer L.L.P.

/s/ Amy F. Sorenson

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of June, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

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